

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

D'AQUILA ADVISORS LLC  
4300 Marsh Landing Blvd. Suite 201  
Jacksonville Beach, FL 32250

Plaintiff,

vs.

KIRSTJEN M. NIELSEN, Secretary  
of Homeland Security  
Washington, DC 20528

L.FRANCIS CISSNA, Director of the United  
States Citizenship and  
Immigration Services  
20 Massachusetts Avenue, N.W.  
Washington, DC 20529

KATHY BARAN, Director of the United  
States Citizenship and Immigration  
Services' California Service Center  
24000 Avila Rd  
Laguna Niguel, CA 92677

Defendants.

Case No.:

COMPLAINT

1 **COMPLAINT**

2 **DESCRIPTION OF ACTION**

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4 1. This complaint is brought by D'AQUILLA ADVISORS LLC against the  
5 Defendants to compel a decision on its Motion to Reconsider and Reopen the  
6 rejection of its Petition for Nonimmigrant upon behalf of Yuting Liu, which has  
7 been pending with the defendants for over four (4) months.  
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10 **JURISDICTION**

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12 2. This being a civil action against the United States arising under the  
13 Immigration and Nationality Act, 8 U.S.C. § 1101 et. seq., the Mandamus Act, 28  
14 U.S.C. § 1361, and the Administrative Procedure Act, 5 U.S.C. § 701 et seq., all  
15 laws of the United States, original jurisdiction over this matter is vested in this  
16 Court by 28 U.S.C. § 1331.  
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19 **DESCRIPTION OF PARTIES**

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21 3. The plaintiff, D'AQUILLA ADVISORS LLC is a Florida Limited  
22 Liability Company.  
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1           5. The defendant, KIRSTJEN M. NIELSEN, is the Secretary of Homeland  
2 Security, and as such has the authority to adjudicate applications for adjustment of  
3 status (Form I-485). She resides for official purposes in the District of Columbia.  
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5           6. The defendant, L. FRANCIS CISSNA, is the Director of the United  
6 States Citizenship and Immigration Services (USCIS), the agency within the  
7 Department of Homeland Security which adjudicates motions to reconsider and  
8 reopen. He resides for official purposes in the District of Columbia.  
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10           7. The defendant, KATHY BARAN, is the Director of the USCIS's  
11 California Service Center where D'AQUILLA ADVISORS LLC's motion to  
12 reopen and reconsider is currently pending, and has immediate responsibility for its  
13 adjudication. She resides for official purposes in the State of California.  
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17                   **BRIEF STATEMENT OF RELEVANT FACTS**  
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19           8. On April 2, 2018, D'AQUILLA ADVISORS LLC caused to be delivered  
20 to the USCIS's California Service Center a petition for nonimmigrant worker  
21 (Form I-129) upon behalf of YUTING LIU, seeking to classify Ms. Liu as an H-  
22 1B nonimmigrant pursuant to 8 U.S.C. § 1101(a)(15)(H)(i)(B) on the grounds that  
23 it was offering her a job in a specialty occupation. The petition also requested that  
24 her nonimmigrant status be changed to H-1B.  
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9. The USCIS at that time stamped that petition as having been filed on April 2, 2018, although subsequently a line was drawn through that stamp.

9. Thereafter, this petition, was returned to D'AQUILLA ADVISORS LLC's with the indication that it had been "rejected" on July 12, 2018.

10. The rejection notice was assigned number CMN 1900024328 by the USCIS.

11. On August 13, 2018 D'AQUILLA ADVISORS LLC filed with the USCIS a timely motion to reconsider and reopen the USCIS's decision rejecting this petition, which was duly accepted for filing and assigned, File No. WAC1890364766.

12. As of today no action has been taken on this motion.

## COUNT I

13. Defendant KIRSTJEN M. NIELSEN, Secretary of Homeland Security, Defendant L. FRANCIS CISSNA, Director of the United States Citizenship and Immigration Services, and Defendant KATHY BARAN, Director of the United States Citizenship and Immigration Services' California Service Center, are each and all officers or employees of the United States and the indicated agency.

1 14. Defendant KIRSTJEN M. NIELSEN, Secretary of Homeland Security,  
2 Defendant L. FRANCIS CISSNA, Director of the United States Citizenship and  
3 Immigration Services, and Defendant KATHY BARAN, Director of the United  
4 States Citizenship and Immigration Services' California Service Center, each and  
5 all owe a duty to the Plaintiff D'AQUILLA ADVISORS LLC to adjudicate its I-  
6 485 within a reasonable period of time. 5 U.S.C. § 555(b) ("With due regard for the  
7 convenience and necessity of the parties or their representatives and within a  
8 reasonable time, each agency shall proceed to conclude a matter presented to it.").  
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11 15. The USCIS has stated on various occasions that it generally requires 90  
12 days to adjudicate a motion to reopen or reconsider.  
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14 16. The USCIS has the authority to approve approximately 85,000 new H-  
15 1B visas each fiscal year.

16 17. Inasmuch as numerous H-1B petitions which were accepted for filing  
17 have yet to be adjudicated, it is apparent that the USCIS has yet to issue 85,000  
18 new H-1B visas in the fiscal year 2018-2019 for which D'AQUILLA ADVISORS  
19 LLC's petition was filed.  
20

21 18. It is unknown when exactly the USCIS will exhaust these petitions, but it  
22 is not unlikely to be relatively soon.  
23

24 19. After the USCIS has issued all 85,000 new H-1B visas for fiscal year  
25 2018-2019 it will undoubtedly take the position that it is statutorily barred from

1 issuing more and that any right which D'AQUILLA ADVISORS LLC has to  
2 adjudication of its motion to reconsider or reopen is moot.

3  
4 20. Accordingly, it is urgent that D'AQUILLA ADVISORS LLC's petition  
5 be adjudicated as soon as reasonably possible to avoid being mooted.

6 21. The over four (months) years in which this motion has been pending  
7 with Defendant KIRSTJEN M. NIELSEN, Secretary of Homeland Security,  
8 Defendant L. FRANCIS CISSNA, Director of the United States Citizenship and  
9 Immigration Services, and Defendant KATHY BARAN, Director of the United  
10 States Citizenship and Immigration Services' California Service Center, is well  
11 beyond that which these officers or employees reasonably require to adjudicate it.  
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14 22. This Court has authority under 28 U.S.C. § 1361 to compel an officer or  
15 employee of the United States to perform a duty owed to the Plaintiffs.  
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17 23. This Court also has authority under 5 U.S.C. § 706(1) to compel agency  
18 action unlawfully withheld or unreasonably delayed.  
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20 **RELIEF REQUESTED**

21 WHEREFORE it is respectfully requested that the Court compel Defendants  
22 KIRSTJEN M. NIELSEN, Secretary of Homeland Security, L. FRANCIS  
23 CISSNA, Director of the United States Citizenship and Immigration Services, and  
24 KATHY BARAN, Director of the United States Citizenship and Immigration  
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1 Services' California Service Center, to adjudicate D'AQUILLA ADVISORS LLC  
2 motion to reopen and reconsider in no more than 30 days from the date of the  
3 Court's order, and to take such other action as it deems appropriate.  
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5 Respectfully submitted,  
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7 Dated this 7<sup>th</sup> day of January , 2019  
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/s/ Michael E. Piston

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